

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

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OCT 09 2003

IN RE: TRI-STATE
CREMATORY LITIGATION

MDL DOCKET NO. 14

LUTHER B. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

FUNERAL HOME DEFENDANTS' RESPONSE
TO PLAINTIFFS' MOTION FOR ENTRY OF AN
ORDER ESTABLISHING A "COMMON BENEFIT" FUND

The Funeral Home Defendants respectfully submit this Response to Pl
Motion for Entry of an Order Establishing a "Common Benefit" Fund.

I. ARGUMENT AND CITATIONS OF AUTHORITY

The Plaintiffs' Steering Committee ("PSC") has requested that th
establish a "Common Benefit" Fund to pay for the cost of services and e
incurred by the PSC on behalf of the class. The Funeral Home Defendants
object to the creation of such a fund, but the Defendants raise one notable o
to the proposed procedure for implementing the fund.

The Funeral Home Defendants object to the role that they are required t
with respect to the "Common Benefit" Fund. Specifically, paragraph 5
Proposed Case Management Order provides as follows:

All amounts paid pursuant to this Order are to be withheld
by the defendants from any payments made by or on behalf
of defendants to settle claims or to satisfy judgments. The
withheld sums are to be deposited into an account to be
established by Plaintiffs' Liaison Counsel in this MDL
litigation. When the account is established, Plaintiffs'

information to Defendants' Liaison Counsel.

The Funeral Home Defendants object to serving as the buffer between t and counsel for individual Plaintiffs. The Funeral Home Defendants should n the responsibility of calculating the amount of money that should be w withholding the money and depositing it in a separate account. If any proble between Plaintiffs' counsel on this issue, the Funeral Home Defendants will in the middle of the dispute.

Instead, the Funeral Home Defendants propose that any settlement be settling Plaintiffs' counsel with that counsel having the responsibility of de the correct amount in the "Common Benefit" Fund. Alternatively, the Funera Defendants could deposit the entire settlement amount in the "Common Fund with the escrow agent disbursing the funds as agreed between Plaintiffs' counsel.

II. CONCLUSION

For the reasons discussed herein, the Funeral Home Defendants respe request that the Court, when establishing the PSC's proposed "Common Be Fund, require Plaintiffs' counsel, not Funeral Home Defendants, to insure t proper amount of any gross monetary recovery is deposited in the "Commo Benefit" Fund.

Respectfully submitted this __9th__ day of October, 2003.

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CERTIFICATE OF SERVICE

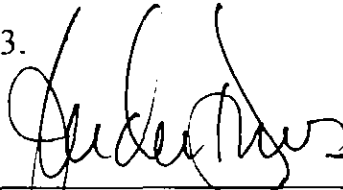
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Funeral Home Defendants' Response to Plaintiffs' Motion for Entry of an Order Establishing a "Common Ben Fund"** by causing a copy of same to be placed in first class U.S. mail with a postage affixed thereto and addressed as follows:

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This 9th day of October, 2003.



J. Anderson Davis